

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 98-512-C - ORDER NO. 1999-249

APRIL 7, 1999

IN RE: Request of the South Carolina Telephone	)	ORDER SUSPENDING
Coalition for Suspension or Modification,	)	LNP REQUIREMENT
Pursuant to 251(f)(2) of the Telecommunications	)	
Act of 1996, of Local Number Portability	)	
Requirements.	)	
	)	

✓ MR

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition of the South Carolina Telephone Coalition (SCTC) for suspension or modification, pursuant to Section 251(f)(2) of the Telecommunications Act of 1996, 47 U.S.C. Section 251(f)(2) of the requirement to provide local number portability (LNP) according to the schedule set forth by the Federal Communications Commission (FCC). Our Order No. 1999-77 granted expedited review of the matter, waived the hearing, and ordered that our decision would be based on the pleadings filed in this case.

In its original Petition, SCTC states that its member companies are rural telephone companies, as per 47 U.S.C. 153(37). Therefore, according to SCTC, each member company currently has an automatic exemption from the obligations of incumbent local exchange carriers listed in Section 251(c) of the Act. In addition, SCTC notes that each competitive local exchange carrier (CLEC) in South Carolina has either limited its certificated authority to areas not served by SCTC member companies, or has executed a Stipulation with SCTC, approved by the Commission, that the CLEC will not serve

customers located in SCTC member companies' areas until such time as specific requirements are met. Thus, according to SCTC, there is currently no CLEC authorized to provide services to any customer currently served by a SCTC member company.

SCTC further notes that each SCTC member company owns less than 2% of the nation's subscriber lines in the aggregate. Therefore, SCTC takes the position that each of its member companies is also entitled to seek modification or suspension of any obligation imposed under Section 251(b) or 251(c) of the Act. Section 251(b)(2) of the Act provides that each local exchange carrier (LEC) has the duty to provide, to the extent technically feasible, LNP in accordance with requirements prescribed by the FCC. SCTC further quotes Section 251(f)(2) which allows LEC's with fewer than 2 percent of the Nation's subscriber lines to petition a State Commission for a suspension or modification of the requirements of subsection (b) or (c) of the section. Section 251(f)(2) goes on to say that the State Commission shall grant such petition under certain specific circumstances.

Accordingly, SCTC requests that we temporarily suspend the requirement that SCTC member companies implement LNP within their switches to the extent required to be able to provide portability of numbers assigned to subscribers of SCTC member companies. The suspension is requested until the later of 1) the FCC-prescribed time frame following a specific request from a certified carrier, or (2) nine months after an interconnection agreement between a CLEC and the particular petitioner has been negotiated or arbitrated and approved by the Commission.

The Consumer Advocate has filed a Response to SCTC's Petition. According to the Consumer Advocate, only six members of SCTC are currently under any requirement to provide LNP, due to their location within the top 100 Metropolitan Statistical Areas (MSAs). The Consumer Advocate therefore believes that SCTC's request is overbroad. However, the Consumer Advocate notes that there has been an apparent lack of interest in this proceeding by potential competitors who selected switches for LNP deployment in the six companies' territories, therefore some suspension of the LNP requirement would be appropriate. Further, the Consumer Advocate believes that no suspension or modification is necessary as to the other SCTC companies, since no requests for interconnection have been made. The Consumer Advocate notes that Section 251(f)(2) requires this Commission to grant a request for suspension or modification if it is: (A) necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement, and (B) is consistent with the public interest, convenience and necessity. SCTC has generally alleged these problems for all of its member companies, although, according to the Consumer Advocate, it has not submitted any specific evidence for specific companies demonstrating the economic consequences of implementing LNP. However, the Consumer Advocate, in any event, does not object to a suspension of the LNP requirements for the six companies, until some specific future time. The Consumer Advocate states that if a potential competitor notifies the Commission of its intent to enter one of these markets, any further request for suspension

or modification of the LNP requirements should be supported by evidence of the economic consequences to the individual company.

SCTC replied to the Consumer Advocate's response. SCTC points out that requiring long-term LNP implementation does not make sense in the absence of actual competition in the service area. Congress and the FCC have recognized that the duties imposed under section 251(b) only make sense when carriers actually seek to connect with or provide services using the LEC's network. SCTC notes that South Carolina is unique, in that there is no CLEC whose certificate is broad enough to allow it to provide services within an area served by a SCTC member company.

SCTC notes that it also provided testimony showing that suspension of the LNP implementation requirement is necessary to avoid an adverse economic impact on users of telecommunications services generally; is necessary to avoid imposing a requirement that is unduly economically burdensome; is necessary to avoid imposing a requirement that is not technically feasible; and is consistent with the public interest.

SCTC disagrees with the Consumer Advocate's position as to suspending LNP requirements for only the six member companies. SCTC notes that it filed a letter with the Commission as early as April 1998 requesting that the Commission make a determination that selection of switches in rural telephone company areas was not reasonable at this time. SCTC initiated this Docket by filing a Petition on October 20, 1998. Because of the procedural process and the length of the time frames provided for in the federal Telecommunications Act, the SCTC is still unclear regarding when its member companies will be required to implement long-term LNP.

SCTC states that it is appropriate and efficient for the Commission to make a determination regarding long-term LNP implementation for rural telephone companies as a group, particularly where SCTC's primary argument is that long-term LNP implementation makes no sense in the absence of actual competition.

SCTC quotes Section 252(g) of the Telecommunications Act of 1996, which provides for consolidation of State proceedings under various sections in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under the Act. Apparently, Alabama has relied on this language in granting a Section 251(f)(2) suspension from the long-term LNP implementation requirement to a group of small telephone companies. The Alabama Commission found in an Order dated June 25, 1998 in Docket No. 24472 that it would be unnecessary and, in fact, counterproductive to insist on the filing of individual Section 251(f)(2) suspensions by all of the small LEC's. "To impose such a requirement would result in exactly the unnecessary duplicative-type proceedings that Section 252(g)'s consolidation language seeks to avoid."

SCTC also objects to the Consumer Advocate's request to serve a copy of its orders in this matter on certain carriers that are not parties in the Docket, since it would set a bad precedent if those carriers had not participated or intervened in the proceeding.

We have examined the materials submitted in this case, and conclude that the original Petition of SCTC should be granted. First, the Petition is proper under Section 251(f)(2). Second, we think the criteria have been met as shown in the prefiled testimony of David J. Herron. Herron testified that suspension of the LNP implementation

requirement is necessary to avoid an adverse economic impact on users of telecommunications services generally; is necessary to avoid imposing a requirement that is unduly economically burdensome; is necessary to avoid imposing a requirement that is not technically feasible; and is consistent with the public interest. Third, we agree with SCTC that requiring long-term LNP implementation does not make sense in the absence of actual competition in the service area. As SCTC points out, there is no CLEC in South Carolina whose certificate is broad enough to allow it to provide services within an area served by a SCTC member company.

Fourth, we agree with the Alabama Commission that separate proceedings to look at LNP for the various individual companies is an unnecessary duplicative-type proceeding that Section 252(g)'s consolidation language seeks to avoid. We understand the Consumer Advocate's assertions involving the six SCTC companies. However, it does not seem necessary to separate these out from the others for consideration, especially when no SCTC company has competition at the present time. It seems to us that having separate hearings for the SCTC companies is unnecessarily burdensome to this Commission under the present non-competitive situation.

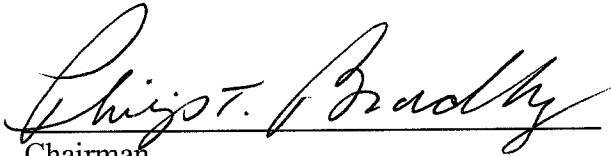
We also reject the Consumer Advocate's proposal to serve copies of this Order on non-parties to this proceeding. Legal notice of this proceeding was given. No entity other than the Consumer Advocate intervened. Therefore, service of this Order on other entities is procedurally inappropriate.

Accordingly, we temporarily suspend the requirement that SCTC member companies implement LNP within their switches to the extent required to be able to

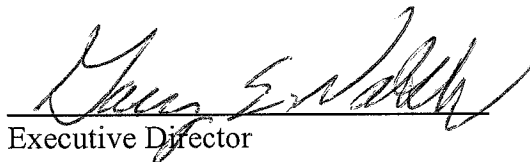
provide portability of numbers assigned to subscribers of SCTC member companies. The suspension shall be effective until the later of 1) the FCC-prescribed time frame following a specific request from a certified carrier, or (2) nine months after an interconnection agreement between a CLEC and the particular petitioner has been negotiated or arbitrated and approved by the Commission.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)